IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 696 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANSUKHBHAI MADHUBHI PRAJAPATI

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 696 of 2003

MR KANTILAL KAYASTHA for Petitioner No. 1

MS NANDINI JOSHI A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/06/2003

ORAL JUDGEMENT

Admit. With the consent of both the parties the matter is taken up for final hearing today.

2. This appeal has been filed under the provisions of Section 449 of the Criminal Procedure Code challenging the order passed by the Fast Track Court, Vyara dated 09.06.2003 in Sessions case no.54/2002 whereby the learned Judge has directed the appellant to be taken into Civil Prison for not producing the main accused. It appears that the appellant had stood as surety for the original accused who had been granted bail by the Trial Court on 04.02.2003 and he was released on bail for a sum of Rs.5,000=00 with with one solvent surety of like amount. The appellant had stood as surety for the original accused. It also appears that the original accused did not respond to the direction issued by the Trial Court to remain present and hence notice to the appellant was issued. Before the Fast Track Court, the appellant had contended that he had not stood as surety for the original accused and he did not know him. However, that contentions were not accepted by the said Court and the impugned order ultimately came to be passed.

2.1. Being aggrieved by the said, the appellant has approached this Court. Mr.K.A. Kayastha learned advocate appearing for the applicant has submitted that he undertakes to see that the original accused is produced before the Trial Court within a period of ten days from the date of his release or in the alternative he is also prepared to deposit a sum of Rs.5,000=00 before the Trial Court. Ms. Joshi learned A.P.P. however submits that the say of the appellant is that he did not know the original accused and the submissions which are now being advanced before this Court are contrary to what he has said before the Trial Court. However, considering the fact that the appellant is to either produce original accused or in the alternative deposit a sum of Rs.5,000=00 before the Trial Court, no useful purpose will be served by detaining him in the custody anymore.

4. In that view of the matter, the appellant is directed to fulfill either of the undertaking given to this Court within stipulated time. The appeal is allowed and the impugned order passed by the Fast Track Court dated 09.06.2003 is quashed and set-aside. In the event, of his failure to comply with the said undertaking, the original order passed by the Trial Court will stand revived and present appellant will have to surrender to the custody forthwith.

Direct Service is permitted.

[AKSHAY H. MEHTA, J.]

/phalguni/